

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DR. SUJATA VYAS, an individual,)	CV 15-02152 RSWL (DFMx)
)	
Plaintiff,)	
v.)	ORDER RE: DEFENDANT
)	BHASKAR VYAS' MOTION FOR
)	ATTORNEY'S FEES [175]
BHASKAR VYAS, an individual; NANCY BUNN, an individual; LOCKHEED MARTIN PENSION PLAN AND CHAMBERS QDRO CONSULTING SERVICES, LLC; CHARLES SCHWAB AND SCHWAB RETIREMENT PLAN SERVICES COMPANY AS PLAN ADMINISTRATOR; COMMITTEE SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP (SCPMG) PLAN ADMINISTRATOR; and DOES 1 through 100, inclusive,)	
)	
Defendants.)	

Currently before the Court is Defendant Bhaskar Vyas' ("Defendant Vyas") Motion for Attorney's Fees ("Motion") [175]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND**

1 **RULES AS FOLLOWS:** the Court **DENIES** Defendant Vyas'
2 Motion.

3 **I. BACKGROUND**

4 **A. Factual Background**

5 Plaintiff Dr. Sujata Vyas ("Plaintiff") is a
6 California resident who married Defendant Vyas in 1981.
7 Second Am. Compl. ("SAC") ¶ 21, ECF No. 63. During the
8 couple's marriage, from October 1985 to February 1992,
9 Defendant Vyas worked for LTV Aerospace & Defense
10 Corporation. Defendant Vyas, at some point during this
11 time period, was enrolled in the Lockheed Martin
12 Pension Plan ("Lockheed Plan") at issue in this suit,
13 although he claims to not have known about the Lockheed
14 Plan or his enrollment in it.

15 The couple separated in 2003, and in 2009, they
16 obtained a Judgment of Dissolution from the Orange
17 County Superior Court finalizing their divorce. First
18 Am. Compl., Ex. A, ECF No. 19. Following the Judgment
19 of Dissolution, court-appointed attorney Defendant
20 Nancy Bunn began drafting Qualified Domestic Relations
21 Orders ("QDROs") regarding the retirement plans to
22 which the couple contributed during the marriage. SAC
23 ¶ 7. It was during this time that Plaintiff moved back
24 into the couple's home and discovered the existence of
25 the Lockheed Plan. Id. ¶ 22.

26 On December 21, 2015, the Orange County Superior
27 Court finalized the QDROs, which did not mention the
28 Lockheed Plan. Id. ¶ 14. The Lockheed Plan does not

1 appear on any QDRO because, as Plaintiff alleges,
2 Defendant Vyas concealed the Lockheed Plan from
3 Plaintiff throughout all court-mandated disclosures and
4 proceedings. Id. ¶ 15.

5 **B. Procedural Background**

6 On June 30, 2017, Defendant Vyas filed a Motion for
7 Summary Judgment [109]. On September 1, 2017, the
8 Court issued its Order granting Defendant Vyas' Motion
9 for Summary Judgment because Plaintiff had provided no
10 evidence to show she was a beneficiary of the Lockheed
11 Plan. Order re Def. Vyas' Mot. for Summ. J. ("Order")
12 29:18-26, 30:1-4, ECF No. 133.

13 Defendant Vyas filed the instant Motion [175] on
14 October 27, 2017. Plaintiff filed her Opposition [186]
15 on November 1, 2017. Defendant Vyas filed his Reply
16 [187] on November 22, 2017. Plaintiff filed an *Ex*
17 *Parte* Application for Leave to File Response to
18 Evidence Filed in Support of Defendant Vyas' Reply
19 [190] on December 1, 2017, and the Court denied the
20 Application on December 4, 2017. Order re Pl.'s *Ex*
21 *Parte* Appl., ECF No. 192. Plaintiff filed her
22 Objections [193] to Defendant Vyas' Reply on December
23 5, 2017.

24 **II. DISCUSSION**

25 **A. Legal Standard**

26 In an ERISA action, "the court in its discretion
27 may allow a reasonable attorney's fee and costs of
28 action to either party." 29 U.S.C. § 1132(g)(1). "[A]

1 fees claimant must show 'some degree of success on the
2 merits' before a court may award attorney's fees under
3 § 1132(g)(1)." Hardt v. Reliance Standard Life Ins.
4 Co., 560 U.S. 242, 255 (2010)(citation omitted). Once
5 the court has "determin[ed] a litigant has achieved
6 some degree of success on the merits, [it] must still
7 consider the Hummell factors before exercising [its]
8 discretion to award fees under § 1132(g)(1)." Simonia
9 v. Glendale Nissan/Infiniti Disability Plan, 608 F.3d
10 1118, 1121 (9th Cir. 2010). The Hummell factors
11 include:

12 (1) the degree of the opposing parties'
13 culpability or bad faith; (2) the ability of the
14 opposing parties to satisfy an award of fees;
15 (3) whether an award of fees against the
16 opposing parties would deter others from acting
17 under similar circumstances; (4) whether the
18 parties requesting fees sought to benefit all
19 participants and beneficiaries of an ERISA plan
20 or to resolve a significant legal question
21 regarding ERISA; and (5) the relative merits of
22 the parties' positions.

18 Hummell v. S.E. Rykoff & Co., 634 F.2d 446, 453 (9th
19 Cir. 1980). No one factor is decisive, and some may
20 not be pertinent in a given case. Carpenters S. Cal.
21 Admin. Corp. v. Russell, 726 F.2d 1410, 1416 (9th. Cir.
22 1984).

23 **B. Analysis**

24 In response to Defendant Vyas' Motion, Plaintiff
25 argues that this Court does not have the authority to
26 award Defendant Vyas attorney's fees because the Court
27 has ruled that Plaintiff is not one of the enumerated
28 parties in 29 U.S.C. § 1132(g)(1). Under 29 U.S.C. §

1 1132(g)(1), "[i]n any action under this title . . . by
2 a participant, beneficiary, or fiduciary, the court in
3 its discretion may allow a reasonable attorney's fee
4 and costs of action to either party." Therefore, for a
5 prevailing party, such as Defendant Vyas, to recover
6 fees under ERISA, the action must have been brought by
7 a "participant, beneficiary, or fiduciary." In the
8 Court's ruling on Defendant Vyas' Motion for Summary
9 Judgment, the Court made clear that Plaintiff could not
10 be considered any one of these enumerated parties.

11 The Ninth Circuit in Credit Managers Ass'n of
12 Southern California v. Kennesaw Life & Accident
13 Insurance Co., 25 F.3d 743 (9th Cir. 1994) created an
14 exception to § 1132(g)(1).¹ In Credit Managers, after
15 the plaintiff's ERISA claim survived summary judgment,
16 the district court, in a bench trial, dismissed the
17 plaintiff's ERISA claim based on the plaintiff's
18 inability to prove it was a fiduciary of an ERISA plan.
19 Id. at 746. The Ninth Circuit then upheld the district
20 court's award of attorneys' fees to the defendant
21 "because the [plaintiff] colorably maintained that it
22 was a fiduciary of an ERISA plan throughout the
23 proceedings below, in a manner sufficient to withstand
24 _____

25 ¹ The Ninth Circuit recognizes another exception allowing a
26 court to award attorney's fees against a "multi-employer benefit
27 ERISA contributions." Corder v. Howard Johnson & Co., 53 F.3d
28 225, 230 (9th Cir. 1994)(citing Carpenters S. Cal. Admin. Grp. v.
Russell, 726 F.2d 1410, 1415-16 (9th Cir. 1984)). Defendant Vyas
does not assert that this exception applies.

1 summary judgment." Id. at 747.

2 The Ninth Circuit then clarified the extent of this
3 exception in Corder v. Howard Johnson & Co. The Corder
4 court summarized the Credit Managers exception as
5 follows: "Thus, when a party survives summary judgment
6 and actually tries its case on the colorable theory
7 that it is one of the enumerated parties specified in §
8 1132(g)(1), it may be subjected to an award of fees
9 when it fails to prevail on that ground because its
10 claim lacks any evidentiary basis." Corder, 53 F.3d at
11 230-31. In reversing an award of attorneys' fees, the
12 Corder court focused on the Credit Managers court's
13 language regarding survival of summary judgment and
14 noted that "the Plan's possible status as a fiduciary
15 *did not survive summary judgment as Credit Managers*
16 *requires.*" Id. at 231 (emphasis added); see Lifecare
17 Mgmt. Servs., LLC v. Zenith Am. Sols., Inc., No.
18 3:15-cv-00307-RCJ-VPC, 2017 U.S. Dist. LEXIS 91355, at
19 *5 (D. Nev. June 14, 2017) ("Corder establishes that
20 before attorneys' fees may be awarded against a
21 plaintiff in an ERISA action, the plaintiff must at
22 least survive summary judgment on the possibility that
23 it is an enumerated party under § 1132(g).").

24 The instant Action is closely analogous to Corder.
25 Here, Plaintiff asserted that she was a beneficiary of
26 the Lockheed Plan and thus entitled to a share of the
27 assets in the Lockheed Plan. See Pl.'s Opp'n to Def.
28 Vyas' Mot. for Summ. J., ECF No. 113. This argument

1 did not survive summary judgment, and in fact, the sole
2 basis for the Court granting summary judgment in
3 Defendant Vyas' favor was that Plaintiff was unable to
4 prove that she was a beneficiary of the Lockheed Plan.
5 See Order 29:18-26.

6 Defendant Vyas attempts to rely on the Credit
7 Managers exception by arguing that the Court previously
8 ruled that Plaintiff had a colorable claim under ERISA
9 sufficient to survive a motion to dismiss. Def. Vyas'
10 Reply 7:4-11, ECF No. 187. However, Defendant Vyas
11 misconstrues the Credit Managers exception and ignores
12 the most important language in Corder. The Corder
13 court made clear that for the Credit Managers exception
14 to apply, a plaintiff's claim that it is one of the
15 three enumerated parties under ERISA *must* survive
16 summary judgment. Corder, 53 F.3d at 213; see Kaelin
17 v. Tenneco, Inc., 28 F. Supp. 2d 489, 490 (N.D. Ill.
18 1998). Because Plaintiff's asserted status as a
19 beneficiary of the Lockheed Plan did not withstand
20 summary judgment, the Credit Managers exception does
21 not apply, and this Court does not possess the
22 authority to award Defendant Vyas the fees he requests
23 under ERISA. See Geiler v. Jones, No. 8:05CV268, 2006
24 U.S. Dist. LEXIS 28010, at *3 (D. Neb. Apr. 27,
25 2006)("As the Court has held that plaintiffs did not
26 qualify as plan participants, beneficiaries or
27 fiduciaries when they brought this action, an award of
28 fees and costs under § 1132(g)(1) is precluded.").

1 IV. CONCLUSION

2 For the foregoing reasons, Defendant Vyas' Motion
3 for Attorney's Fees [175] is **DENIED.**

4 **IT IS SO ORDERED.**

5
6 DATED: 12/21/2017

s/ RONALD S.W. LEW

7 HONORABLE RONALD S.W. LEW
8 Senior U.S. District Judge
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